

REMARKS

It is noted that the Office Action states that the Information Disclosure Statement filed on April 15, 2002 has been considered by the Examiner.

CLAIM OBJECTIONS

Claim 16 was objected to because the abbreviation for dimethylacetamide should be DMAC instead of DAMC. The Office Action states that appropriate correction is required.

With entry of the above amendment Claim 16 has been amended to recite DMAC instead of DAMC. It is therefore respectfully submitted that the objection to Claim 16 has been overcome and should be withdrawn.

CLAIM REJECTIONS – 35 USC § 112

Claims 13-16 stand rejected under 35 USC 112, first paragraph, because the specification, while being enabling for adding a dialkylamide additive to the electrolyte of the battery, does not reasonably provide enablement for adding an additive to an unspecified part of the battery. The Office Action states that the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected to make the invention commensurate in scope with the claims. More specifically, the Office Action states that the disclosure is drawn only to a dialkylamide additive in the electrolyte.

With entry of the above amendment applicants have amended claim 16 to recite that the DMAC is added to the electrolyte of the battery or cell. In addition, with entry of the above

amendment, claims 14 and 15 have also been amended to recite the same. With entry of the above amendment it is submitted that the specification does enable a person skilled in the art to make the invention commensurate in scope with the claims. It is therefore respectfully submitted, that the rejection of Claim 16 under 35 USC 112, first paragraph, has been overcome and should be withdrawn.

Claim 13 stands rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More specifically, the Office Action states that Claim 13 recites the limitation "said lithium manganese oxide" in line 3 and that there is insufficient antecedent basis for this limitation in the claim.

Applicants respectfully submit that the "said lithium manganese oxide" in line 3 finds antecedent basis in lines 1 and 2 of Claim 13 wherein it is recited that the "active material is lithium manganese oxide." It is therefore respectfully submitted that the rejection of Claim 13 under 35 USC 112 should be withdrawn.

CLAIM REJECTIONS -- 35 USC § 102

Claims 13-16 are rejected under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Lee et al. (USP 5,952,126). The Examiner states that Lee et al. disclose an electrochemical cell having a non-metallic anode, a lithium manganese oxide cathode and an electrolyte which comprises a solute consisting essentially of a salt of lithium, and as solvent a mixture of ethylene carbonate and N,N-dimethylacetamide which are mixed in a 1:1 volumetric ratio. The Examiner further states that the N,N-dimethylacetamide (DMAC)

functions as an additive in the cell because it is present in the electrolyte of the cell and that the DMAC inherently has the properties cited in claims 13-16.

The Office Action further states that lithium manganese oxide would inherently have a breakdown voltage of about 5 volts and DMAC would inherently absorb the excess charge energy the excess charge energy at the breakdown voltage less than that of the lithium manganese oxide when the electrochemical cell is overcharged. The Examiner has stated that an electrochemical cell having DMAC in the electrolyte is inherently characterized by a lesser rate of gas formation during cycling of the cell as compared to a similar cell without the DMAC in the electrolyte. The Examiner has further stated that the DMAC in the electrolyte would inherently neutralize acid attack on the lithium salt in the cell.

The Office Action notes that the court has held that claiming a property or characteristic which is inherently present in the prior art does not necessarily make the claim patentable. The Examiner has stated that when the Examiner has provided a sound basis for believing that the products of the applicants and the prior art are the same, that the burden of proof is shifted to the applicants to prove that the product shown in the prior art does not possess the characteristics of the claimed product.

Applicants respectfully traverse the rejection as applied to the amended claims and request reconsideration for the following reasons. As amended, the subject matter of claims 13-16 is not anticipated or made obvious by the Lee reference. The Lee reference is cited for disclosing a solvent mixture of ethylene carbonate and N, N-dimethylacetamide mixed in a 1:1 volumetric ratio. The claims as amended recite that the N,N-dialkylamide or DMAC additives are present in an amount of about up to 10% by weight of the solvent of the electrolyte. Lee discloses the DMAC as a major component of the solvent of the electrolyte not as an additive.

Lee does not teach disclose or suggest the use of DMAC as an additive. On the contrary Lee teaches away from the use of DMAC as an additive and teaches the use of DMAC as a major component of the electrolyte solvent.

Furthermore, Lee does not disclose, teach or suggest DMAC at weight range of up to 10% by weight of the solvent of the electrolyte. The Lee reference teaches that the DMAC:EC is present at a ratio of from 3:1 to 1:3 by volume. Using the densities of DMAC and EC, this range converts to a range of 19% to 68% by weight of DMAC. Thus, the Lee reference teaches away from the presently claimed weight percentage of about up to 10% weight.

Applicants respectfully submit therefore, that the Lee reference does not anticipate or make obvious the claims as amended. It is therefore respectfully submitted that the rejection of claims 13-16 under 35 USC 102(e) as anticipated by or, in the alternative under 35 USC 103(a) as obvious in view of Lee, has been overcome and should be withdrawn in view of the above amendment and these remarks.

Reconsideration of the amended claims in the instant case for allowance is respectfully requested in view of the above amendment and these remarks. It is respectfully submitted that all of the claims in the case are allowable and passage of the application and claims to issue is respectfully requested.

Respectfully submitted,

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